

STATE OF MICHIGAN
COURT OF APPEALS

ERIN LEECH,

Plaintiff-Appellee,

v

ANITA KRAMER,

Defendant,

and

KENT COUNTY BOARD OF ROAD
COMMISSIONERS,

Defendant-Appellant.

UNPUBLISHED

October 11, 2005

No. 253827

Kent Circuit Court

LC No. 03-006701-NI

Before: Saad, P.J., and Jansen and Markey, JJ.

SAAD, P.J., (*dissenting*).

I respectfully dissent.

In *Haliw v Sterling Hgts.*, 464 Mich 297, 627 NW2d 581 (2001), the Michigan Supreme Court ruled that plaintiff must show that it was a combination of ice and a defect in the road that caused the accident. And, regarding the defect, importantly, the plaintiff must show that the alleged defect rendered the roadbed unsafe for public travel at all times. Accordingly, the rule articulated in *Haliw* requires (1) a plaintiff to prove a defect as that term is defined in *Haliw* and (2) that said defect, in combination with the weather conditions, caused the accident. Here, though plaintiff's lawyer said that the defect rendered the roadbed unsafe for public travel at all times and although the trial court accepted plaintiff's counsel's argument, there is simply no evidence presented to support this conclusory assertion. The Supreme Court's holding should not be circumvented by the simple expedient of plaintiff's counsel's unsupported assertion and carte blanche acceptance by the trial court. To survive a motion for summary disposition on the grounds of governmental immunity, a plaintiff must offer some *admissible evidence*, by affidavit or deposition, that the defect, indeed, rendered the roadbed unsafe for travel at all times. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). Here, no such evidence was proffered by plaintiff. If we had before us an affidavit or deposition testimony from a witness with the appropriate expertise to opine that the defect is the type required by *Haliw*, then the matter should go to the jury on other issues, including causation. However, absent such a proffer

of evidence, plaintiff's case should be dismissed in accordance with *Haliw*.

/s/ Henry William Saad